

With respect to food for human consumption which is to be consumed off the premises where it is sold, Retailers' Occupation Tax is imposed at the rate of 1%. See 86 Ill. Adm. Code 130.310. (This is a GIL).

October 23, 2002

Dear Xxxxx:

This letter is in response to your letter dated August 22, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I am writing with a concern I have regarding the collecting and payment of sales tax on food items. I have occasionally shopped at a store called AAA in CITY. Its primary business is selling candy, although it does have a few other items for sale. When candy is purchased there, the sales tax charged is always 8.75% rather than the reduced rate usually charged for food items. It is my understanding that food items purchased in a retail store are to be charged the lower sales tax, and that only food purchased in a restaurant would be charged the higher tax.

My additional concern would be to know what rate the store is reporting and paying to the state. I would not want to think that the store is collecting 8.75% from customers but only paying the state 2%. Could you please let me know the answer to two questions? First, is the store charging the correct amount to customers? Second, is the store paying the correct amount to the state?

Thank you.

Please refer to the enclosed copy of 86 Ill. Adm. Code 130.310, "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food can be subject to either low (1%) or high (6.25%) rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made. The current regulations no longer use a high/low rate distinction based solely on the size or quantity in which food items are sold. Rather, the appropriate rate of tax for food items sold is determined by the character of the retailers' establishment as well as the nature of the sales.

All sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not for immediate consumption is sold. Please refer to 86 Ill. Adm. Code 130.310(b)(2)(A).

If businesses do not provide facilities for on-site consumption, they must charge the high rate on all food sales if a majority of their gross receipts from food sales is for items sold in a state of preparation for immediate consumption (prepared by the retailer so as to be eaten without substantial delay after the final act of preparation) and would charge the low rate on all food sales (except for hot foods, foods prepared by the retailer for immediate consumption, soft drinks and alcoholic beverages) if a majority of their gross receipts from food sales is for items sold in bulk.

Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final act of preparation by the retailer. It is presumed that retailers who sell food prepared for immediate consumption in individual single-sized servings will sell all such items for consumption without substantive delay. Thus, for example, a retailer whose gross sales receipts are derived primarily from sales of individual candy pieces, fudge, or doughnuts prepared in the morning will be subject to the high rate of tax regardless of when during a business day such items are sold and actually consumed. The high rate is applicable to all his sales in this instance, including items sold in bulk. See 86 Ill. Adm. Code 130.310(b)(6). However, a candy retailer whose gross receipts reflect that a majority of items sold are in bulk, such as boxes of candy, should charge the low rate for its bulk sales although it would charge the full rate for any sales of food prepared for immediate consumption.

Please be advised that confidentiality provisions in the Retailers' Occupation Tax Act, 35 ILCS 120/11, prohibit us from disclosing information contained on the sales tax return of a business. However, we are passing your concerns along to the appropriate personnel within the Department.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.